

# CLARK HILL

---

Barbara A. Ruga  
T 616.608.1105  
F 616.608.1165  
Email: [bruga@clarkhill.com](mailto:bruga@clarkhill.com)

Clark Hill PLC  
200 Ottawa Avenue NW  
Suite 500  
Grand Rapids, Michigan 49503  
T 616.608.1100  
F 616.608.1199  
[clarkhill.com](http://clarkhill.com)

April 8, 2015

Ms. Linda Wacyk  
MASA  
1001 Centennial Way, Suite 300  
Lansing, MI 48917-9279

Re: Section 1249 FAQ

Dear Ms. Wacyk:

You have requested our opinion concerning various questions being posed to MASA while Michigan preK-12 and intermediate public districts await possible legislative action on proposed final amendments to section 1249.<sup>1</sup> This letter responds to your request.

*Summary of MRSC Section 1249's Legislative History*

To set the stage for our opinion, a general history of section 1249 may be helpful. As you know, the Michigan Revised School Code ("MRSC") designates the statutory rights and responsibilities of Michigan public school districts, preK-12 and intermediate. Importantly, one of these responsibilities is the obligation to evaluate teachers and school administrators on an annual basis.

In 2009, the Michigan Legislature added a version of the current section 1249 to the Michigan Revised School Code, exhorting all Michigan public school districts to develop a performance evaluation system for teachers and school administrators that was rigorous, transparent and fair. The original version of section 1249 mandated that districts incorporate clear measures of student growth as part of the overall evaluation process, conduct annual evaluations, and rank teachers based on instructional effectiveness, not years of service. The effectiveness ratings required by section 1249 (highly effective, effective, minimally effective

---

<sup>1</sup> MCL §380.1249. This provision of the Michigan Revised School Code details a district's responsibilities for teacher and school administrator evaluations. For convenience, we refer to teacher evaluations throughout this opinion.

and ineffective) are critical factors to consider when layoff and recall decisions are made<sup>2</sup>, or in determining acquisition of tenure status<sup>3</sup> or continued employment.<sup>4</sup>

Subsequently, the Michigan Council of Educator Effectiveness (“MCEE”) was tasked with the responsibility of issuing a report recommending specific evaluation tool(s) and student growth measures to assist Districts in complying with section 1249. A number of Michigan districts participated in a pilot program using one of four teacher evaluation tools and/or provided focus group feedback on a reviewed set of five administrator evaluation tools, the results of which were studied by the University of Michigan Institute for Social Research (“ISR”). The Council’s long-awaited report was issued on July 24, 2013. MCEE Final Recommendations July 2013. It contained specific recommendations on preferred evaluation tools and protocols, and made generalized suggestions on categories of student growth measures to be used in evaluating teachers and making the high stakes personnel decisions (layoff, recall and dismissal) required by other provisions of the School Code and Teachers’ Tenure Act.<sup>5</sup> The MCEE recommendations specifically included all four of the piloted teacher evaluation systems and only two of the five reviewed administrator evaluation systems.

In December 2013, the ISR released its preliminary Report about the results of the pilot. The ISR found, among other things:

- The most commonly used measures of student growth in the pilot schools were teacher-made and other locally developed tests.
- Elementary schools, more often than secondary, also used standardized assessments such as DIBELS, AIMS Web and Star.
- Michigan’s testing system does not allow use of the state assessment in a timely manner. For example, using MEAP scores involved using data for students the teacher taught in the year prior to the evaluation year.
- In the current Michigan testing data system, many teachers who teach at tested grades or tested subjects can be linked to only a very small number of students, thus minimizing the validity of such a measure.

“Update Promoting High Quality Teacher Evaluations In Michigan: Lessons From A Pilot of Educator Effectiveness Tools,” December, 2013; pages 8-9.

---

<sup>2</sup> MCL §380.1248.

<sup>3</sup> Since July 19, 2011, in order to acquire tenure within a single district, teachers serving a four or five year probationary period must be rated at least Effective during their three final years of probation. MCL §§38.83b. If rated highly effective after three consecutive years, the probationary period may be shortened to four years.

<sup>4</sup> Teachers rated Ineffective for three consecutive years must be dismissed; teachers may be dismissed earlier for reasons that are not arbitrary or capricious. MCL §38.101.

<sup>5</sup> MCL §38.71 et seq.

As districts awaited the MCEE and ISR Reports, section 1249 continued to require that all Michigan public school districts maintain a compliant evaluation system, the hallmarks of which included:

- Annual evaluations, unless teachers achieved highly effective ratings for multiple years in which case, every other year evaluations could be conducted.
- Use of the four effectiveness ratings described above.
- Multiple classroom observations, unless teachers achieved certain effectiveness ratings, in which case a single observation could suffice.
- Final year end performance ratings, which included assessments of individual teacher goals.
- Assigned weights to student growth measures not to exceed 25% through June 30, 2014, with an expectation that the weight given to student growth in the 2014-2015 school year would increase to 40%.

#### *Pending Legislative Action & The “Stopgap” Bill*

In response to the issuance of the MCEE and ISR Reports, the Michigan Legislature formed a subcommittee which met frequently and collaborated with multiple stakeholders to craft final amendments to section 1249. House Bills 5223 and 5224 were released in the spring of 2014, and in May of 2014, a draft Senate Substitute Bill was circulated. It was widely believed among the public school district industry during the spring and early summer of 2014, that a final bill would be adopted by the end of the 2014 legislative session. Some districts delayed making decisions on adopting a particular evaluation tool or student growth measures, believing that the Legislature would provide guidance on the specific tools and student growth measures that must be used.

However, unable to agree on a final bill, the 2014 Legislature passed 2014 PA 257, widely known as “a stopgap” bill, which once again amended section 1249. That amendment is currently the law, and importantly provides that during the 2014-2015 school year:

- Annual evaluations are required, without exception.
- Continued use of a four-tier effectiveness rating scale.
- Multiple classroom observations, without exception.

- Specific protocols within the performance evaluation system, which had been required during 2013-2014, were eliminated in 2014-2015 and deferred to 2015-2016.<sup>6</sup>
- Final year end performance ratings which included assessments of individual teacher goals.
- Student growth is an undefined “significant factor” during 2014-2015, but increases to 50% in 2015-2016.

As of the date of this opinion letter, the House Bills proposed in the spring of 2014 have expired and to our knowledge, the only pending bill is Senate Bill 103 introduced by Senator Pavlov on February 12, 2015. Unlike current law, Senate Bill 103 fixes the student growth component of the evaluation system at 25% beginning in 2017-2018, and 45% in 2018-2019. Until 2017-2018, student growth must be a “significant factor” of the performance evaluation system. If passed, the now expired House Bills would have set student growth as a percentage of teacher and school administrator evaluations at 25% until 2017-2018, at which time the percentage would increase to and remain at 40%.

Currently, absent further legislative action, the provisions of the stopgap bill will become operational in 2015-2016, including the fact that student growth must then be 50% of the overall evaluation.<sup>7</sup> The chart attached as Appendix I shows the various possible legislative outcomes, depending upon whether current law, the expired House Bills, or Senate Bill 103 is applicable.

### *Frequently Asked Questions*

In light of the legislative history and the absence of clear direction, MASA and Clark Hill have developed a list of frequently asked questions as districts await final legislation clarifying teacher and school administrator evaluation systems for 2015-2016 and beyond. Our jointly developed FAQ is set forth below:

#### **Q-1. Should my District select one of the evaluation tools piloted by the Michigan Council of Educator Effectiveness for the 2015-2016 school year?**

A-1. We believe that most districts are best-served by adopting one of the four piloted teacher evaluation systems and one of the administrator evaluation systems recommended by the MCEE or identified within the now expired House Bills. See Appendix II for a listing of these

---

<sup>6</sup> For example, in 2013-2014, districts were required to provide teachers who received a Minimally Effective or Ineffective rating at the end of 2012-2013 with a MidYear Progress Report. The Stopgap Bill delayed that required Report until 2015-2016; however, we have advised districts to maintain that component to provide constructive feedback to those teachers who could most benefit from it, and to maintain the integrity and stability of the performance evaluation system.

<sup>7</sup> MCL §380.1249(3).

tools. While it is impossible to predict with any certainty what the Legislature may do, if Senate Bill 103 controls on this issue, the Legislature will not mandate any specific tool or group of tools. However, both the expired House Bills and Senate Bill 103 contain provisions specifying stringent criteria a district must satisfy if it elects to use its own individualized tool or system. See Appendix III for a summary of the recommended criteria for an exemption. It thus appears reasonable to conclude, at a minimum, that absent a legislative mandate to adopt a particular tool, districts will be required to demonstrate that their selected tool is research-based.

While we are aware that some districts may use local tools that meet the proposed statutory requirements for exemption from one of the piloted tools (if the district has financed the costs of research, development, and ongoing validation and support for the model), in our experience, many districts lack the staff and resources to satisfy the proposed statutory criteria for an individualized or local tool. Furthermore, we anticipate legal challenges to high stakes decisions if a district cannot establish that its system was research-based. Therefore, while we believe that there are drawbacks to each of the piloted tools and systems, we err on the side of encouraging districts to adopt one of the piloted and reviewed systems, because they are research-based, viewed as valid and reliable, and satisfy the criteria of Senate Bill 103 and the expired House Bills.

Districts should work with the vendors of the MCEE reviewed and piloted systems to understand the model designers' provisions for stylizing or adapting the system to local district needs in ways that do not compromise the validity of the system. Once a district adopts a system, we recommend that districts develop and communicate their implementation plan including any plans to either phase-in or select specific areas of the evaluation tool to emphasize, prioritize, and or otherwise adapt the model. A phase-in plan might be particularly important, because a system or tool that is too lengthy and complex could be poorly implemented and result in confusing feedback to the employee being evaluated if the evaluator and evaluatee have not both had sufficient time and training to fully understand each of the evaluation components and criteria. A phase-in plan allows a district to select specific areas of the evaluation tool for initial implementation as best fits the needs of the district, and then add other components over time until full implementation is achieved. In this regard, we recommend districts review the **TNTP Core Teaching Rubric** at [tntp.org](http://tntp.org).

**Q-2. Should our District adopt a piloted and reviewed tool for 2015-2016, or can we wait still another year?**

**A-2.** As discussed above, current law does not require that districts adopt one of the piloted and reviewed systems for the 2015-2016 school year, and Senate Bill 103 would not require it either. However, even if nothing changes legislatively, **current law allows use of a local tool only if it is “. . . consistent with the state evaluation tool.”**<sup>8</sup> Thus, even under

---

<sup>8</sup> MCL §380.1249(2)(d). This language is difficult to apply, in the absence of a “state evaluation tool.”

current law, we encourage adoption of a reviewed, approved or otherwise research-based evaluation system.

While we hope that the Legislature provides ample notice if a specific tool is mandated (as the expired House Bills would have required), we cannot guarantee that result. Furthermore, if your District plans to select one of the approved systems at some future date, we recommend doing so sooner rather than later, for the following reasons.

First, we are concerned that when a district does not use a research-based system, it is vulnerable to a claim that their system is arbitrary and capricious and thus any rating issued as a result of the system is also similarly flawed. Secondly, stability in your system will enhance the credibility and integrity of your system and your principals' capacity to effectively use it. In short, the decision to delay adoption of a research-based tool while waiting for legislative clarity that may or may not occur, should be balanced against a district's need for a research-based system with which teachers and school administrators become familiar, and is perceived as valid and reliable.

**Q-3. What if our District satisfied the original exemption for performance evaluation systems in effect as of July 19, 2011?**

A-3. While reasonable minds can differ as to whether many districts actually met the criteria for an exemption contained within the originally adopted version of section 1249, as stated above, Senate Bill 103 and the expired House Bills propose more stringent criteria that will replace the original grounds permitted for an exemption. *See*, Appendix III. As such, districts that would like to retain their own tools, should closely study whether they could satisfy the proposed statutory criteria of Senate Bill 103. Although there is currently no agency review or enforcement mechanism of a district's choice and implementation of a performance evaluation system, we anticipate challenges to the system, if it is not research-based, could arise during litigation over layoffs, recalls, dismissals and the like. We anticipate that a teacher who challenges an adverse employment action may claim that the decision was arbitrary or capricious because the system was not research-based or reviewed. Thus, we recommend prudence in selecting and then stylizing or adapting (see above) one of the MCEE reviewed/piloted tools and systems for teachers and similarly, adopting a research-based system for administrators.

**Q-4. What student growth measures should be used? Why shouldn't our District wait to adopt student growth measures until the Legislature passes a final bill?**

A-4. It appears unlikely that the Legislature will adopt any bill that mandates a specific set of student growth measures applicable to all situations. **Currently**, a "significant part" of the student growth measure **must** include the State assessment for grades and subjects where the assessment exists. This requirement will continue even if no other legislative action is taken in time for the 2015-2016 school year. It is important that districts ensure that they are complying with current law starting this year (i.e., 2014-2015).

CLARK HILL

Based on review of Senate Bill 103 and the expired House Bills, an as yet to be determined portion of the statutory weight to be assigned to student growth will be the State assessment for grades and subjects for which a required State assessment exists. The balance of the measure will be locally determined.

While districts may prefer more detailed guidance, in our opinion, retaining local control is actually the more desirable outcome as it will allow districts to locally determine which national, state or local assessments and other objective indicators they believe are rigorous, transparent and fair, and best fit a district's curriculum standards and initiatives. There is not yet a "one size fits all" set of student success indicators and measures and the ultimate legislation – if any - will hopefully reflect that reality. *See*, ISR Report, *supra*, pp. 8-9.

Since it currently appears unlikely that a specific measure or measures will be mandated for the student growth model, we strongly recommend that districts continue to identify those assessments and objective indicators that they believe are appropriate for monitoring student success, making sure that the same measures are used for all *similarly situated* teachers and school administrators.

**Q-5. What are other districts doing about student growth?**

A-5. As some of the evaluation model providers are training districts across Michigan, they are learning that there is wide variability in how districts are understanding and addressing student growth ratings. Districts report using State assessments, nationally normed vendor assessments, locally developed assessments, and, in some cases, classroom assessments. Some districts are developing student learning objectives from one or more assessments and incorporating that data into their district growth model. Few districts report having a full student growth model in place that address all curriculum areas or all aspects of a local student success model.

For now, we recommend that districts participate in ISD, regional and state collaborations and work groups as available to access information, training, and support in developing their local student growth model. Also, we want to remind districts to use the same measures and objective indicators for all *similarly situated* teachers and administrators, with administrator's growth ratings derived directly from the same measures and objective indicators as those used for teachers under their supervision. For district administrators, this would be an aggregation of the measures and indicators used for growth ratings at the school levels.

**Q-6. Should our District establish 50% weight for student growth in 2015-2016?**

A-6. This is one of the most difficult questions to answer because if nothing changes legislatively, current law will become applicable in 2015-2016 and it will then be required that

---

50% of the overall evaluation must be based on student growth measures.<sup>9</sup> In our opinion, most districts are not yet ready to accord that much weight to student growth measures about which there is substantial uncertainty in the field. We are hopeful that the weight will either remain as “a significant factor” (current law or the pending Senate Substitute Bills) or 25% (the House Bills) for the next two to three years as districts continue to explore their options and select valid and reliable student growth measures. While this outcome is especially desirable in light of the very recent change in State assessments, given that it is April 7, our hope is waning.

Considering all of these competing factors, we recommend a minimalist approach: retaining the 25% weight that was mandated under the 2013-2014 version of section 1249, until it is known whether new legislation will be adopted. Though far from ideal, because the weight to be given to student growth is a prohibited subject of bargaining, each District will be able, if needed, to make a last minute modification to the 2015-2016 system and either increase the weight to 50% if no other legislation is adopted, or reduce it to 25%, 40% or 45% depending upon the final legislative resolution, if any.<sup>10</sup> Districts should be vigilant and stay on top of legislative developments on this important issue.

We stress that unless legislative action is taken to amend the current requirements of section 1249, the weight to be given to student growth measures during 2015-2016 must, by law, be 50% for teachers and school administrator evaluations.

**Q-7. Should a District invest in training to implement an evaluation model for teachers and school administrators?**

A-7. Absolutely, yes. Implementation of any model without appropriate levels of training and implementation fidelity could leave a district vulnerable to claims that evaluations conducted under the model are not reliable, and that any resulting ratings are “arbitrary and capricious.” *See*, ISR Report, pp. 20-21. While we do not believe such an argument should be compelling or controlling, each district’s performance evaluation system should require a minimum level of training for evaluators.

Furthermore, the expired House Bills expressly stated that evaluators must be trained on the evaluation model to be used for both teacher and administrator evaluations, and Senate Bill 103 infers that such training is required, as the criteria that evaluation models must satisfy include providing a defined process for training users of the model and for implementing the model with fidelity.<sup>11</sup> In our judgment, it is prudent for districts to provide training in order to

---

<sup>9</sup> Ironically, current law also requires districts to use the legislatively mandated student growth measures in 2015-2016. The only such measure is that in 2014-2015, the state assessment must “in part” be one of the assessments for grades and subjects for which a state assessment is administered.

<sup>10</sup> District regulations should state that it will give student growth the weight mandated by law.

<sup>11</sup> Senator Pavlov’s Bill requires that only the school administrator responsible for the teacher’s performance and observers trained in the evaluation tool may conduct observations.



claim implementation fidelity for any model the district adopts. We believe the Legislature will require an element of training.

**Q-8. In preparing for the 2015-2016 school year, should our District incorporate the 2013-2014 or the 2014-2015 procedural requirements of section 1249?**

A-8. As stated earlier, during 2013-2014, section 1249 required certain procedural requirements be followed as part of a district's teacher evaluation system. For example, teachers rated minimally effective or ineffective were entitled to a Mid-Year Progress Report following a meeting to review their progress on specific goals within their Individualized Development Plan, as well as their progress on identified student growth measures. 2014 PA 257 eliminated such requirements, but then "restored" them in 2015-2016. (A complete list of these requirements are replicated in Appendix IV.) Senator Pavlov's Bill would also restore these requirements as of the 2018-2019 school year. We anticipate these requirements will be restored in the near future, and nothing precludes a district from maintaining them, in the absence of a legislative mandate.

We have recommended, and continue to recommend, that districts continue honoring the 2013-2014 procedural protocols during both 2014-2015 and 2015-2016 (and thereafter). Otherwise, there is confusion about what are the required components of a District's performance evaluation system. Finally, these components demonstrate notice and fairness, and establish that employees are receiving ample opportunities to improve.

**Q-9. Should my district wait until legislation is passed so that we can avoid paying for an(other) unfunded mandate?**

A-9. This question assumes that the Legislature will provide additional funding for a portion of the performance evaluation system. As of this date, it is uncertain whether courts would conclude that evaluation of teachers and school administrators or the training of evaluators is a new requirement that triggers Headlee. Some will argue that these functions are inherent obligations of any employer. Further, it appears legislators are debating whether any funding will be offered, and court resolution could take several years. In the meantime, a district should ensure that its evaluation system is research-based and its evaluators are at least minimally trained, so that the high stakes decisions it makes based on evaluation ratings are not vulnerable to litigation.

### *Conclusion*

Since 2009, Michigan school districts, teachers and school administrators alike, have rededicated themselves to identifying and implementing improved performance evaluation systems in reaction to section 1249's mandates, based on a genuine desire to enhance instructional practice and student achievement throughout the State. Many districts have already adopted one of the piloted, reviewed and researched tools, or developed/stylized their own. Most if not all districts have enhanced their focus on classroom observations and improving

instructional pedagogy in order to support student growth. Collectively, across the State, conversations about best practices in teaching and learning strategies are ongoing and occurring at increasingly high levels of interest and enthusiasm.

At the same time, many districts are still struggling with identifying clear approaches to student growth that are perceived as rigorous, transparent, fair, valid and reliable. The ISR Report issued in December of 2013, pinpoints precisely the current obstacles to according as much as 40% weight to such measures, given the absence of commonly recognized or understood measures of student growth for all subjects, grades and levels.

Accordingly, we urge MASA and all school industry groups and stakeholders, to take a unified stance in support of a reasonable timeframe before any meaningful increase in the weight given to student growth measures occurs. Until such measures are in fact clear, valid and reliable, the progress made statewide to date could be undermined by mandating a higher weight be assigned to a factor that so far has been complicated to measure or implement in a consistent or reliable way across districts. Districts that have mastered the art of measuring student growth would still be free to increase the weight given to student growth up to 50%, but the law need not mandate such an increase, until more valid and reliable measures exist. The timeframe for compliance is especially important in light of the recent and significant change in State assessments.

If you have any questions about our opinion, or if there are additional questions that MASA would like answered for the benefit of its members, please let us know. Thank you for the opportunity to be of service regarding this most interesting and challenging subject.

Sincerely,

CLARK HILL PLC



Barbara A. Ruga

BAR:mjz

cc: Dr. Patricia Reeves  
Mr. Brad Biladeau

**APPENDIX I:**  
**POTENTIAL LEGISLATIVE OUTCOMES:**  
**STUDENT GROWTH AS % OF EVALUATION**

	<b>Current Law 2014 PA 257</b>	<b>Expired HB 5223 &amp; HB 5224</b>	<b>Senate Bill 103</b>
2015-2016	50%	25% <sup>1</sup>	“significant factor”
2016-2017	50%	25%	“significant factor”
2017-2018	50%	40%	25%
2018-2019	50%	40%	45% <sup>2</sup>

---

<sup>1</sup> Half of student growth for teachers in core content areas in grades and subjects for which student growth data are available shall be the state assessment tool.

<sup>2</sup> For grades and subjects in which state assessments are administered, at least 50% of student growth must be measured using the state assessments.

## **APPENDIX II: RESEARCH-BASED, REVIEWED TOOLS**

The four identified teacher evaluation tools in the expired House Bill 5223 were:

- The Charlotte Danielson Framework for Teaching.
- The R. Marzano Teacher Evaluation Model.
- The Thoughtful Classroom.
- 5 Dimensions of Teaching and Learning.

The three identified administrator evaluation tools in the expired House Bill 5224 were:

- The School Advance Administrator Evaluation System developed by P. Reeves and P. McNeil.
- The D. Reeves Leadership Performance Rubric.
- The R. Marzano School and District Leadership Evaluation.

### **APPENDIX III: PROPOSED CRITERIA TO USE A DISTRICT TOOL**

**2015 Senate Bill 0103** states: a school district, intermediate school district, or public school academy shall post on its public website all of the following information about the evaluation tool or tools it uses for its performance evaluation system for teachers:

- a) the research 1 base for the evaluation framework, instrument, and process.
- b) the identity and qualifications of the author or authors.
- c) either evidence of reliability, validity, and efficacy or a plan for developing that evidence.
- d) the evaluation frameworks and rubrics with detailed descriptors for each performance level on key summative indicators.
- e) a description of the processes for conducting classroom observations, collecting evidence, conducting evaluation conferences, developing performance ratings, and developing performance improvement plans.
- f) a description of the plan for providing evaluators and observers with training.

**Expired 2014 House Bill 5223** (applicable to teachers) stated: school district, intermediate school district, or public school academy may use 1 or more locally developed evaluation tools for the purposes of evaluating teacher performance as provided in subsection (2) if the school district, intermediate school district, or public school academy provides all of the following information about the locally developed evaluation tool on its public website:

- a) the research base for the evaluation framework, instrument, and process.
- b) the identity and qualifications of the author or authors.
- c) either evidence of reliability, validity, and efficacy or a plan for developing that evidence.
- d) the evaluation frameworks and rubrics with detailed descriptors for each performance level on key summative indicators.
- e) a description of the processes for conducting classroom observations, collecting evidence, conducting evaluation conferences, developing performance ratings, and developing performance improvement plans.
- f) a description of the plan for providing all evaluators and observers with initial and follow-up training and the identity and qualifications of the providers of that training.

**Expired 2014 House Bill 5224** (applicable to school administrators) stated: a school district, intermediate school district, or public school academy may use 1 or more locally developed evaluation tools for the purposes of evaluating school administrator performance as provided in subsection (1) if the school district, intermediate school district, or public school academy provides all of the following information about the locally developed evaluation tool on its public website:

- a) the research base for the evaluation framework, instrument, and process.
- b) the identity and qualifications of the author or authors.
- c) either evidence of reliability, validity, and efficacy or a plan for developing that evidence.
- d) the evaluation frameworks and rubrics with detailed descriptors for each performance level on key summative indicators.
- e) a description of the processes for collecting evidence, conducting evaluation conferences, developing performance ratings, and developing performance improvement plans.
- f) a description of the plan for providing all evaluators and observers with initial and follow-up training and the identity and qualifications of the providers of that training.

**APPENDIX IV:  
2013-2014 PROCEDURAL REQUIREMENTS RESTORED IN 2015-2016<sup>1</sup>**

**Section 1249 (2014 PA 257)** currently states:

(2) Beginning with the 2015-2016 school year, the board of a school district or intermediate school district or board of directors of a public school academy shall ensure that the performance evaluation system for teachers meets all of the following:

(a) The performance evaluation system shall include at least an annual year-end evaluation for all teachers. An annual year-end evaluation shall meet all of the following:

(i) At least 50% of the annual year-end evaluation shall be based on student growth and assessment data. All student growth and assessment data shall be measured using the student growth assessment tool that is required under legislation enacted by the legislature after review of the recommendations contained in the report of the former Michigan council for educator effectiveness.

(ii) If there are student growth and assessment data available for a teacher for at least 3 school years, the annual year-end evaluation shall be based on the student growth and assessment data for the most recent 3-consecutive-school-year period. If there are not student growth and assessment data available for a teacher for at least 3 school years, the annual year-end evaluation shall be based on all student growth and assessment data that are available for the teacher.

(iii) The annual year-end evaluation shall include specific performance goals that will assist in improving effectiveness for the next school year and are developed by the school administrator or his or her designee conducting the evaluation, in consultation with the teacher, and any recommended training identified by the school administrator or designee, in consultation with the teacher, that would assist the teacher in meeting these goals. For a teacher described in subdivision (b), the school administrator or designee shall develop, in consultation with the teacher, an individualized development plan that includes these goals and training and is designed to assist the teacher to improve his or her effectiveness.

(b) The performance evaluation system shall include a midyear progress report for a teacher who is in the first year of the probationary period prescribed by section 1 of article II of 1937 (Ex Sess) PA 4, MCL 38.81, or who received a rating of minimally effective or ineffective in his or her most recent annual year-end evaluation. The midyear progress report shall be used as a supplemental tool to gauge a teacher's improvement from the preceding school year and to assist a teacher to improve. All of the following apply to the midyear progress report:

---

<sup>1</sup> Assumes 2014 PA 257 (current law) is not amended.

- (i) The midyear progress report shall be based at least in part on student achievement.
  - (ii) The midyear progress report shall be aligned with the teacher's individualized development plan under subdivision (a)(iii).
  - (iii) The midyear progress report shall include specific performance goals for the remainder of the school year that are developed by the school administrator conducting the annual year-end evaluation or his or her designee and any recommended training identified by the school administrator or designee that would assist the teacher in meeting these goals. At the midyear progress report, the school administrator or designee shall develop, in consultation with the teacher, a written improvement plan that includes these goals and training and is designed to assist the teacher to improve his or her rating.
  - (iv) The midyear progress report shall not take the place of an annual year-end evaluation.
- (c) The performance evaluation system shall include classroom observations to assist in the performance evaluations. All of the following apply to these classroom observations:
- (i) Except as provided in this subdivision, the manner in which a classroom observation is conducted shall be prescribed in the evaluation tool for teachers described in subdivision (d).
  - (ii) A classroom observation shall include a review of the teacher's lesson plan and the state curriculum standard being used in the lesson and a review of pupil engagement in the lesson.
  - (iii) A classroom observation does not have to be for an entire class period.
  - (iv) Unless a teacher has received a rating of effective or highly effective on his or her 2 most recent annual year-end evaluations, there shall be multiple classroom observations of the teacher each school year.
- (d) For the purposes of conducting annual year-end evaluations under the performance evaluation system, the school district, intermediate school district, or public school academy shall adopt and implement the state evaluation tool for teachers that is required under legislation enacted by the legislature after review of the recommendations contained in the report of the former Michigan council for educator effectiveness. However, if a school district, intermediate school district, or public school academy has a local evaluation tool for teachers that is consistent with the state evaluation tool, the school district, intermediate school district, or public school academy may conduct annual year-end evaluations for teachers using that local evaluation tool.
- (e) The performance evaluation system shall assign an effectiveness rating to each teacher of highly effective, effective, minimally effective, or ineffective, based on his or her score on the annual year-end evaluation described in this subsection.



(f) As part of the performance evaluation system, and in addition to the requirements of section 1526, a school district, intermediate school district, or public school academy is encouraged to assign a mentor or coach to each teacher who is described in subdivision (b).

(g) The performance evaluation system may allow for exemption of student growth data for a particular pupil for a school year upon the recommendation of the school administrator conducting the annual year-end evaluation or his or her designee and approval of the school district superintendent or his or her designee, intermediate superintendent or his or her designee, or chief administrator of the public school academy, as applicable.

(h) The performance evaluation system shall provide that, if a teacher is rated as ineffective on 3 consecutive annual year-end evaluations, the school district, public school academy, or intermediate school district shall dismiss the teacher from his or her employment. This subdivision does not affect the ability of a school district, intermediate school district, or public school academy to dismiss an ineffective teacher from his or her employment regardless of whether the teacher is rated as ineffective on 3 consecutive annual year-end evaluations.

(i) The performance evaluation system shall provide that, if a teacher is rated as highly effective on 3 consecutive annual year-end evaluations, the school district, intermediate school district, or public school academy may choose to conduct a year-end evaluation biennially instead of annually. However, if a teacher is not rated as highly effective on 1 of these biennial year-end evaluations, the teacher shall again be provided with annual year-end evaluations.

(j) The performance evaluation system shall provide that, if a teacher who is not in a probationary period prescribed by section 1 of article II of 1937 (Ex Sess) PA 4, MCL 38.81, is rated as ineffective on an annual year-end evaluation, the teacher may request a review of the evaluation and the rating by the school district superintendent, intermediate superintendent, or chief administrator of the public school academy, as applicable. The request for a review must be submitted in writing within 20 days after the teacher is informed of the rating. Upon receipt of the request, the school district superintendent, intermediate superintendent, or chief administrator of the public school academy, as applicable, shall review the evaluation and rating and may make any modifications as appropriate based on his or her review. However, the performance evaluation system shall not allow for a review as described in this subdivision more than twice in a 3-school-year period.